



Identification and Referral of Potential Trafficking Victims or Traffickers before the Executive Office for Immigration Review

Version 2

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I. Background

The William Wilberforce Trafficking Victims Protection Act of 2000 (TVPA),¹ recognized and addressed the serious harm committed against victims of trafficking. With each reauthorization of the legislation,² Congress has expanded protections for trafficking victims, as well as enhanced law enforcement tools to prosecute those who engage in trafficking in persons. Severe forms of trafficking in persons are defined as “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery,” or “sex trafficking in which a commercial sex act is induced by fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age.” TVPA § 103(8); 22 U.S.C. § 7102(9). When the TVPA was passed in 2000, Congress recognized that “[a]t least 700,000 persons annually, primarily women and children, are trafficked within or across international borders. Approximately 50,000 women and children are trafficked into the United States each year.” The number of individuals who have fallen victim to trafficking worldwide now stands at more than 20 million. U.S. Dep’t of State, *Trafficking in Persons Report* (2014). Congress passed the TVPA, as well as its subsequent reauthorizations, to further the humanitarian interests of the United States by protecting and assisting victims and strengthening the ability of government officials to investigate and prosecute crimes involving human trafficking.

Under the TVPA, personnel from the Executive Office for Immigration Review (EOIR) have an affirmative duty to identify victims of trafficking. TVPA § 107(c). EOIR has taken significant steps to train its personnel who work with unaccompanied alien children or potential trafficking victims. On April 23, 2009, following the passage of the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008, EOIR issued a mandatory, comprehensive training CD on human trafficking. EOIR has also offered training for immigration judges and the Board of Immigration Appeals (Board or BIA) on trafficking since that time, and intends to continue to do so in the future.

Following the enactment of the TVPA, the Department of Justice (DOJ) created a referral unit to assist victims of trafficking and report potential traffickers. EOIR originally issued this protocol in 2012 to assist its personnel in the identification and reporting of suspected victims of trafficking or suspected traffickers to the DOJ Trafficking Intake Coordinator. This second version updates and clarifies certain provisions, including providing updated contact information for reporting potential trafficking victims or traffickers.

¹ Pub.L. 106-386 (codified at 28 U.S.C. § 1100 (2001)).

² See Trafficking Victims Reauthorization Act of 2003 (Pub.L. 108-193); Trafficking Victims Reauthorization Act of 2005 (Pub.L. 109-164); William Wilberforce Trafficking Victims Reauthorization Act of 2008 (Pub.L. 110-457); and Trafficking Victims Protection Reauthorization Act of 2013 (Pub.L. 113-4).

II. Identifying and Reporting a Potential Trafficking Victim

A. Identifying Characteristics of a Potential Trafficking Victim

A potential trafficking victim may appear much like any other respondent or individual who comes to the immigration court. He or she could be a young or older child, a teen, a woman or a man, although women and children are disproportionately victims of trafficking. Victims are commonly found in the sex industry (e.g., massage parlors, escort services or strip clubs), domestic situations (e.g., nannies or servants), sweatshop factories, construction, farm work, fisheries, hotels or tourist industries, restaurant services, janitorial services, or panhandling.

Based on the TVPA definition of “severe forms of trafficking in persons,” trafficking victims fall into three categories:

- 1) Minors under the age of 18 who are induced into committing commercial sex acts;
- 2) Adults who are induced to commit commercial sex acts by force, fraud, or coercion;
- 3) Children or adults who are forced to perform labor or services in conditions that constitute involuntary servitude, peonage, debt bondage, or slavery through force, fraud, or coercion.

TVPA § 103(8); 22 U.S.C. § 7102(9).

There may be many signs that a respondent appearing before the immigration court (or someone else with whom court personnel come into contact) is a trafficking victim. Appendix A provides EOIR personnel with considerations to help determine whether a person is a victim of trafficking. These considerations are not intended for the questioning of the potential trafficking victim directly.

B. Special Considerations

EOIR personnel should approach a potential trafficking victim with sensitivity, understanding that he or she may be fearful of anyone in the government, and may not recognize that government officials can assist him or her in finding protection. The potential trafficking victim may believe that if he or she discloses the abuse he or she has experienced, he or she will be deported. Moreover, the potential trafficking victim may not see him- or herself as a victim and may not realize that what is being done to him or her is illegal and abusive. The potential trafficking victim may feel loyalty to the trafficker and thus may not offer information readily.

There are additional considerations due to the court's role as a neutral decision-making body in the immigration setting. Immigration judges and other court personnel should be sensitive of this role when interacting with suspected trafficking victims, and avoid any actions that might be perceived as prosecutorial or assuming an advocacy role.

Additionally, immigration judges and other court personnel should be mindful of ethical considerations. For example, it may not be appropriate to question a represented individual outside the presence of his or her attorney or to act in a way which would be perceived as interfering with the attorney/client relationship. Moreover, court personnel should be aware that their actions can, at times, be attributed to the Immigration Judge.

Before speaking to a respondent who may be a trafficking victim, remember several considerations specific to the human trafficking context. Many human trafficking victims may not speak English. They may not know what city or state they are in because they have been moved frequently. They also may have been told that they would be deported or their family members would face retaliation if they say anything.

C. Questions to Ask a Potential Trafficking Victim

Before speaking to the potential trafficking victim, it is important to gauge whether asking questions will place him or her in danger. If it appears safe and appropriate to do so, EOIR personnel can use the questions listed in Appendix B. If an EOIR employee encounters someone who he or she believes is a potential trafficking victim, that employee should complete the referral form in Appendix C.

When completing the form, the EOIR employee is encouraged to use whatever information he or she already knows about the potential victim, as well as the questions in Appendix B. However, the EOIR employee should not interrogate the potential victim or question the individual if it appears unsafe or inappropriate to do so. Keep in mind that the purpose of the questions is to elicit information to submit to the DOJ Trafficking Intake Coordinator. The EOIR employee does not need to gather and document every detail of the suspected trafficking. He or she only needs to pass on any information given.

D. Referral of a Potential Trafficking Victim to the DOJ Trafficking Intake Coordinator

After the referral form at Appendix C is completed, or includes as much information as the court personnel have, it should be emailed to the Court Administrator. After reviewing the information on the form, the Court Administrator should then email it to the DOJ Trafficking Intake Coordinator within 24 hours of the identification of the potential trafficking victim. Heather Brown is currently DOJ's Trafficking Intake Coordinator and her contact information is:

- E-mail: coordinator.trafficking@usdoj.gov (for submission of the referral form)
- Direct line: 202-353-7628 (for questions only)

Please note that this contact information is *only for the use of government officials*. The Court Administrator should also notify his or her Assistant Chief Immigration Judge (ACIJ) of the situation.

If it appears safe to do so, court personnel can also provide the potential trafficking victim with resources and information. The HHS and the Polaris Project, a non-profit anti-trafficking organization, have many free resources on their websites that can be downloaded or ordered. Courts should keep these materials on hand to provide to potential trafficking victims as necessary. The Polaris Project also maintains a resource hotline for victims. The number for this hotline is 888-373-7888, and can be found on all of their resource materials. This number may be given to potential trafficking victims, but should not be used by court personnel to report suspected trafficking situations.

HHS materials can be found at:

<http://www.acf.hhs.gov/programs/orr/resource/download-campaign-posters-and-brochures>

Polaris Project materials can be found at:

<http://www.polarisproject.org/resources/outreach-and-awareness-materials>

Finally, if it is possible at the court's location, court personnel should prominently display outreach materials in public places where potential trafficking victims will be likely to see them.

III. Identifying and Referring a Potential Trafficker

A. Identifying Characteristics of a Potential Trafficker

EOIR court personnel may encounter individuals who they believe are currently engaging in or have previously engaged in human trafficking. It is important to keep in mind the definition of severe human trafficking, as defined by the TVPA:

- a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or
- b) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

TVPA § 103(8); 22 U.S.C. § 7102(9).

Court personnel may notice individuals who attend court with a respondent, and appear to be controlling the respondent's behavior or intimidating the respondent. They may also encounter information regarding a respondent who appears to have engaged or

be engaging in human trafficking. The following statements correct common misconceptions about traffickers:

- Traffickers need not smuggle or force their victims to move from place to place.
- Traffickers need not move their victims across borders and victims need not be from a foreign country.
- Traffickers need not employ physical force, physical abuse, or physical restraint.

Because a human trafficker is involved in criminal activity, court personnel should not question a potential trafficker. Instead, personnel should complete the trafficker referral form located in Appendix D to the best of their ability.

B. Referral of a Potential Trafficker to the DOJ Trafficking Intake Coordinator

If EOIR personnel believe they have encountered a trafficker, they should complete the referral form in Appendix D. This form will assist EOIR personnel in capturing the necessary information for making a referral. EOIR personnel should complete the form to the best of their ability, and should answer only those questions for which they have the information.

After the referral form at Appendix D is completed, or includes as much information as the court personnel have, it should be emailed to the Court Administrator. After reviewing the information on the form, the Court Administrator should email it to the DOJ Trafficking Intake Coordinator. As noted above, Heather Brown is currently DOJ's Trafficking Intake Coordinator and her contact information is:

- E-mail: coordinator.trafficking@usdoj.gov (for submission of the referral form)
- Direct line: 202-353-7628 (for questions only)

Again, this contact information is *only for the use of government officials*. The Court Administrator should also notify his or her ACIJ of the situation.

Appendix A

Considerations to help identify victims of human trafficking:

- Is the respondent accompanied by another person who seems controlling or is trying to speak for him or her?
- Are there signs of physical or psychological abuse?
- Does the respondent seem submissive or fearful?
- Does the respondent know the attorney or legal representative who appeared with him or her in court?
- Does the respondent know the person who hired his or her attorney or legal representative?
- Does the respondent know the person with whom he or she is staying?
- Did the respondent tell the court that the person with whom he or she is staying is a relative, but was unable to identify the familial relationship?
- Did the respondent meet the person with whom he or she is staying prior to arriving in the United States?
- Is the respondent familiar with the address that he or she gave the court for notice purposes? Does the respondent know what city he or she is in?
- Did the respondent arrive at the court with luggage?
- Did the respondent travel a long distance to arrive at the court?
- Does the respondent have possession of his or her identity documents?
- Can you explain the basis for your suspicion that the respondent might be a trafficking victim?

Appendix B

If appropriate, questions to ask a potential human trafficking victim may include:

- Can you leave your job or situation if you want?
- Can you come and go as you please?
- Have you been threatened if you try to leave?
- Have you been physically harmed in any way?
- What are your working or living conditions like?
- Are you attending school and if so, what is the name of that school?
- Where do you sleep and eat?
- Do you sleep in a bed, on a cot or on the floor?
- Have you ever been deprived of food, water, sleep or medical care?
- Do you have to ask permission to eat, sleep or go to the bathroom?
- Are there locks on your doors and windows in your place of residence or employment so you cannot get out?
- Has anyone threatened your family?
- Has your identification or documentation been taken from you?
- Is anyone forcing you to do anything that you do not want to do?